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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GABE BEAUPERTHUY, et al., on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

24 HOUR FITNESS USA, INC., a
California corporation d/b/a 24 Hour
Fitness; SPORT AND FITNESS CLUBS
OF AMERICA, INC., a California
corporation d/b/a 24 Hour Fitness,

Defendants.

Case No. C-06-00715 SC

JOINT STIPULATED OPT-IN ORDER

1 WHEREAS, Plaintiffs John Davidsson, *et al.*, filed a motion to facilitate notice to a group of
 2 Personal Trainers under Section 16(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b),
 3 and Defendant 24 Hour Fitness USA, Inc., *et al.*, (hereinafter "24 Hour Fitness") opposed Plaintiffs'
 4 motion;

5 WHEREAS, pursuant to this Court's Order of March 24, 2008 Granting In Part And Denying
 6 In Part Plaintiffs' Motion For Facilitated Notice Pursuant To 29 U.S.C. §216(b) entered in the above-
 7 captioned matter ("Conditional Certification Order"), IT IS HEREBY ORDERED AS FOLLOWS:

8 1. In addition to those claims subject to this Court's Order of May 9, 2007 (Doc 145),
 9 Plaintiffs' FLSA claims in this case shall proceed as a conditional collective action under Section
 10 16(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §216(b), on behalf of all persons who
 11 work or have worked for 24 Hour Fitness in any state in the United States, except California, during
 12 the time period between October 29, 1999 and the present ("Claims Period"), in any Personal Trainer
 13 position classified by 24 Hour Fitness as non-exempt from overtime requirements, including the
 14 titles PT Trainer, Certified Personal Trainer ("CPT"), CPT I, CPT II, CPT III, CPT Elite, Trainer Fit
 15 Pro ("TFP"), TFP I, TFP II, TFP III, TFP Elite, FLS, Apex Tech, Fitness Instructor, and Floor
 16 Instructor.

17 2. The FLSA Notice and Consent to Join forms (attached hereto as Exhibit "A") are
 18 approved.

19 3. CPT Group, Inc. ("Notice Administrator") is approved as the Notice Administrator
 20 for the FLSA Notice pursuant to 29 U.S.C. §216(b). Plaintiffs shall bear the cost of notice, including
 21 but not limited to fees charged by the Notice Administrator and copying and mailing fees.

22 4. Within ninety (90) days of the date of this ORDER, 24 Hour Fitness shall produce to
 23 plaintiffs' counsel and the Notice Administrator a machine-readable list of all the names and
 24 addresses of all persons described in paragraph 1 of this ORDER, so that notice may be timely
 25 accomplished. 24 Hour Fitness shall further produce to the Notice Administrator within ten (10)
 26 days of any request by the Administrator all social security numbers ("SSN") for any person
 27 described in paragraph 1 of this ORDER whose FLSA Notice is returned by the Post Office. The
 28 SSNs shall only be provided to the Notice Administrator who shall maintain them in strict

1 confidentiality, in a password protected database. The Notice Administrator shall implement
2 physical, technical and administrative safeguards for the SSNs, including, but not necessarily limited
3 to, those which restrict access to the SSNs to employees of the Notice Administrator with a need to
4 know. The Notice Administrator may not disclose the SSNs to plaintiffs' counsel or any other third
5 party. Use of the SSNs shall be limited to performing skip tracing methods to locate the current
6 address of the person to whom notice should be given. Use and possession of the list of name and
7 address information provided by 24 Hour Fitness pursuant to this paragraph shall be solely limited to
8 Plaintiffs' counsel and the Notice Administrator. The Notice Administrator shall use the information
9 solely for the purpose of providing notice of this action to persons entitled to file Consent to Join
10 forms pursuant to paragraph 1 of this ORDER. Plaintiffs' counsel shall not copy the list or any of the
11 names and addresses on the list and shall maintain the confidentiality of the names and addresses.
12 Plaintiffs' counsel shall return the list of names and addresses to 24 Hour Fitness on or before ten
13 (10) days after the expiration of the opt-in period. Plaintiffs' counsel shall use the name and address
14 data only for the following purposes: to confirm with the Notice Administrator and Defendants'
15 counsel that the Notice Administrator sends notices to the individuals on the list; and to send a copy
16 of the FLSA Notice to prospective class members upon their request.

17 5. The Notice Administrator shall mail the proposed FLSA Notice and Consent to Join
18 Form to all persons described in paragraph 1 of this ORDER as soon as practicable and in no event
19 later than thirty (30) days after receiving the mailing list described in paragraph 4 of this ORDER, or
20 a longer period of time if the parties so stipulate.

21 6. As soon as practicable and in any event no later than 20 days prior to the close of the
22 opt-in period, the Notice Administrator shall give notice (and supplemented notices as necessary) to
23 all counsel the names of putative class members whose FLSA notices are returned by the Post Office
24 as undeliverable, who cannot be located through the National Change Of Address (NCOA) database
25 or skip tracing methods. Within fourteen (14) days of such notice, 24 Hour Fitness shall provide a
26 copy of the Notice and Consent to Join Forms to each such individual on the list who is a current 24
27 Hour Fitness employee at that time. 24 Hour Fitness shall not transmit any communication to the
28 persons described in paragraph 1 that undermines the FLSA notice or attempts to discourage

1 participation in the collective action.

2 7. Each "Consent to Join" form must be postmarked or faxed to the Notice
3 Administrator no later than sixty (60) days after the date that the Notice Administrator mails the
4 notice. Within ten (10) days of the close of the opt-in period described above, all Consent to Join
5 forms shall be filed with the Court. Individuals for whom Consent to Join forms are not filed within
6 such time shall not participate in this lawsuit.

7 8. After 24 Hour Fitness has produced to plaintiffs' counsel and the Notice
8 Administrator the machine-readable list of all the names and addresses of all persons described in
9 paragraph 1 of this ORDER, the parties shall meet and confer and 24 Hour Fitness shall describe the
10 method it used to choose which persons were to be included and plaintiffs shall assert any objections
11 plaintiffs have to the process used by 24 Hour Fitness. If the parties are unable to resolve any issues,
12 either party may request leave to file a motion with the Court. If such leave is granted, the time for
13 the Notice to be mailed set forth in paragraph 5 shall be tolled until the dispute that is the subject of
14 the motion is resolved.

15 IT IS SO ORDERED.

16 Dated: May 1, 2008



UNITED STATES DISTRICT COURT JUDGE

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EXHIBIT A

NOTICE OF COLLECTIVE ACTION

**THIS IS NOT A LAWSUIT AGAINST YOU. PLEASE READ THIS NOTICE
CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED.**

TO: All persons who have worked for 24 Hour Fitness in any state in the United States, except California, during the time period between October 29, 1999 and the present ("Claims Period"), as Personal Trainers (including the titles PT Trainer, Certified Personal Trainer ("CPT"), CPT I, CPT II, CPT III, CPT Elite, Trainer Fit Pro ("TFP"), TFP I, TFP II, TFP III, TFP Elite, FLS, Apex Tech, Fitness Instructor, and Floor Instructor) classified by 24 Hour Fitness as non-exempt from overtime requirements.

RE: Fair Labor Standards Act ("FLSA") Lawsuit Filed Against 24 Hour Fitness

1. INTRODUCTION

The purpose of this Notice is to inform you of the existence of a collective action lawsuit in which you potentially are "similarly situated" to the named plaintiffs, to advise you of how your rights may be affected by this lawsuit, and to instruct you on the procedure for participating in this lawsuit if you so desire.

As described more fully below, if you are eligible and wish to participate in this collective action, you must timely complete and submit the "Consent to Join" form attached to this Notice.

2. DESCRIPTION OF THE LAWSUIT

On February 1, 2006, the named plaintiffs filed a Complaint in the U.S. District Court for the Northern District of California against 24 Hour Fitness on behalf of themselves and certain groups of past and present employees of 24 Hour Fitness in states other than California. Plaintiffs allege that 24 Hour Fitness failed to pay them and past and present employees in personal trainer positions who were classified as non-exempt from overtime requirements by 24 Hour Fitness, the wages and overtime pay to which they were entitled under the federal Fair Labor Standards Act ("FLSA"). Plaintiffs allege they are entitled to unpaid wages and overtime for such work performed after October 29, 1999.

Plaintiffs also seek liquidated damages and attorneys' fees and costs.

24 Hour Fitness denies any and all liability, including Plaintiffs' allegations that it failed to

1 correctly compensate employees or that it is liable to Plaintiffs for violations of the FLSA.

2 **3. THE CURRENT STATE OF THIS LAWSUIT**

3 This lawsuit is in the early stages of litigation. The Court has conditionally certified this case
4 as a collective action and ordered this Notice be sent to you.

5 If you do join, you may be required to participate in the discovery process. You may be
6 required to answer written questions, under oath, concerning the overtime hours you claim, if any,
7 that you worked which were not compensated. You may also be required to answer questions, under
8 oath, in an oral deposition and/or give testimony at a trial and travel to do so.

9 **4. PERSONS ELIGIBLE TO RECEIVE THIS NOTICE**

10 The U.S. District Court has ordered this FLSA Notice to be distributed to all persons who
11 currently work or have worked for 24 Hour Fitness, in any state, except California, between October
12 29, 1999 and the present, in any personal trainer position classified by 24 Hour Fitness as non-
13 exempt from overtime requirements.

14 **5. YOUR RIGHT TO PARTICIPATE IN THIS LAWSUIT**

15 If you were employed by 24 Hour Fitness for any period between October 29, 1999 and the
16 present in a personal trainer position that 24 Hour Fitness treated as non-exempt from overtime, and
17 you believe that 24 Hour Fitness has failed to pay you for all hours worked or for all overtime
18 compensation to which you are entitled, you have the right to join the pending FLSA lawsuit against
19 24 Hour Fitness.

20 If you want to participate in this lawsuit, you must take affirmative steps to indicate your
21 intent to join the action. You must complete, sign and fax or mail a copy of the "Consent to Join"
22 form, which is attached to this Notice, to CPT Group, Inc., who is the court-appointed Notice
23 Administrator. If mailed, your signed "Consent to Join" form must be postmarked no later than
24 *[insert date 60 days after the mailing date]*.

25 If faxed, your signed "Consent To Join" form must be successfully faxed no later than *[insert*
26 *date 60 days after the mailing date]*.

27 If your "Consent to Join" form is not postmarked by that date, or not successfully faxed to the
28 Notice Administrator (CPT Group) by that date, you will not be allowed to participate in this

lawsuit.

Having a "Consent to Join" form filed does not guarantee that you will be able to participate in the trial of this lawsuit as this may depend upon a final ruling from the District Court that you and the named Plaintiffs are "similarly situated" under federal law. Failing to return and have filed a "Consent to join" form postmarked on or before the deadline means that you cannot participate in any settlement or judgment for damages under the FLSA as part of this lawsuit.

6. STATUTE OF LIMITATIONS

Normally, the FLSA contains a limitations period of at least two years and potentially up to three years for the filing of a claim for unpaid overtime wages, after which the claim is forever barred. However, in this case the Court has tolled the statute of limitations to allow all personal trainer Plaintiffs to sue for conduct which occurred any time after October 29, 1999. In the event that you decide not to file a Consent to Join in this lawsuit, you should consult with your own attorney as to the statute of limitations which would apply to your claim.

7. EFFECT OF JOINING THIS SUIT

If you file a "Consent to Join" form and the Court later permits your claims to proceed to trial as part of the collective action, you will be bound by any judgment regarding the FLSA claims in the lawsuit, whether favorable or unfavorable to Plaintiffs. While the suit is proceeding, you may be required to provide relevant information, and may be required to give sworn testimony in a deposition or in Court and travel to do so.

If you choose to join this collective action, you will be represented by the law firm currently representing the Plaintiffs. If you join the suit, you will not be required to pay attorney's fees or expenses in advance. Class counsel may be paid either by the Defendant, or they may, either in addition to or instead of payment from Defendant, receive a percentage of any money judgment or settlement in favor of you, or others similarly situated, as agreed by contract and/or ordered by the Court.

As an alternative to joining this lawsuit, you may file your own lawsuit with any counsel of your choosing, or do nothing.

If you return a Consent to Join form, you should be aware that important decisions

concerning the prosecution of this case including for the FLSA claims may be made on your behalf.

8. NO LEGAL EFFECT IN NOT JOINING THIS LAWSUIT

If you choose not to join this collective action, you will not be affected by any judgment, whether it is favorable or unfavorable to Plaintiffs and the collective class. If you choose not to file a Consent to Join form, you are free to file your own lawsuit. If you choose not to file a Consent to Join form, the statute of limitations will continue to run until such time as you file a lawsuit on your own behalf.

9. NO RETALIATION PERMITTED

FEDERAL LAW PROHIBITS 24 HOUR FITNESS OR ITS AGENTS FROM TAKING ANY ACTION AGAINST YOU BECAUSE YOU ELECT TO JOIN THIS ACTION BY FILLING OUT AND RETURNING THE "CONSENT TO JOIN" FORM, OR OTHERWISE EXERCISING YOUR RIGHTS UNDER THE FLSA.

10. ADMINISTRATOR

CPT Group, Inc.
16630 Aston
Irvine, California 92606
Facsimile: 949-852-9340
Telephone: 888-687-3491

11. PLAINTIFFS' COLLECTIVE ACTION COUNSEL

Thomas G. Foley, Jr. State Bar No. 065812
Nathan Lowery, State Bar No. 238141
FOLEY BEZEK BEHLE & CURTIS, LLP
15 West Carrillo Street
Santa Barbara, California 93101
Telephone: (805) 962-9495
Facsimile: (805) 965-0722
[TBD email address to be added to form]

Richard E. Donahoo, State Bar No. 186957
Thomas J. Welch, State Bar No. 242065
DONAHOO & ASSOCIATES
505 North Tustin Avenue, Suite 160
Santa Ana, California 92705
Telephone: (714) 953-1010
Facsimile: (714) 953-1777
[TBD email address to be added to form]

1 **12. DEFENDANTS' LEGAL REPRESENTATION**

2 Garry G. Mathiason
3 John C. Kloosterman
4 Lisa C. Chagala
5 **LITTLER MENDELSON, P.C.**
6 650 California Street, 20th Floor
7 San Francisco, CA 94108
8 Telephone: (415) 433-1940
9 jkloosterman@littler.com

10 **13. FURTHER INFORMATION**

11 For further information about this lawsuit, including any part of this notice, please contact
12 Plaintiffs' counsel at the following toll-free number: 1-800-[TBD] or email at [TBD]. PLEASE DO
13 NOT CONTACT THE COURT OR ANY COURT PERSONNEL FOR INFORMATION.

14 **THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE**
15 **UNITED STATES DISTRICT COURT FOR THE' NORTHERN DISTRICT OF**
16 **CALIFORNIA. THE COURT HAS TAKEN NO POSITION IN THIS CASE REGARDING**
17 **THE MERITS OF PLAINTIFFS' CLAIMS OR DEFENDANTS' DEFENSES.**

18 IT IS SO ORDERED.

19 Dated: _____, 2008

20 _____
21 UNITED STATES DISTRICT COURT JUDGE

FILING INFORMATION

1. INSTRUCTIONS FOR FILING CONSENT TO JOIN FORMS

If you choose to join this FLSA collective action, your "Consent to Join" form must be completed, signed and returned. Your "Consent to Join" form must be postmarked or fax-dated no later than *[insert date 60 days after the mailing date]*.

CHANGE OF ADDRESS

If you send a "Consent to Join" form to the Notice Administrator and then move or change your address, please advise Plaintiffs' counsel:

Thomas G. Foley, Jr. State Bar No. 065812
Nathan Lowery, State Bar No. 238141
FOLEY BEZEK BEHLE & CURTIS, LLP
15 West Carrillo Street
Santa Barbara, California 93101
Telephone: (805) 962-9495
Facsimile: (805) 965-0722
[TBD email address to be added to form]

Richard E. Donahoo, State Bar No. 186957
Thomas J. Welch, State Bar No. 242065
DONAHOO & ASSOCIATES
505 North Tustin Avenue, Suite 160
Santa Ana, California 92705
Telephone: (714) 953-1010
Facsimile: (714) 953-1777

[TBD email address to be added to form]

2. FURTHER INFORMATION

To obtain further information about this lawsuit, including your right to join, please contact Plaintiffs' counsel at the address or phone number listed directly above.

CONSENT TO JOIN LAWSUIT AS A PARTY PLAINTIFF

Beauperthuy, et al. v. 24 Hour Fitness, et al., United States District Court for the Northern District of California. Case Number C-06-00715 SC.

I understand that this lawsuit is being brought under the federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* I consent, agree, and opt-in to become a party plaintiff to this lawsuit. I agree to be bound by any adjudication or settlement of this action by the Court, whether it is favorable or unfavorable, and agree to designate the class representatives as my agents, and I understand that I will be bound by the decisions and agreements made by an entered into by said representatives. I hereby designate the law firms of Foley, Bezek, Behle & Curtis, LLP and Donahoo & Associates, to represent me in this action.

I am a current or former employee of 24 Hour Fitness, and I worked in the following position(s) at 24 Hour Fitness:

<u>Position</u>	<u>Club Location</u>	<u>Dates Employed (Month/Year)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Dated: _____ Signature: _____

Name (Printed): _____ Telephone: _____

Address: _____

Email address: _____

This form must be returned by mail POSTMARKED (or successfully faxed) NO LATER THAN [insert date] to:

CPT Group, Inc.
16630 Aston
Irvine, California 92606
Facsimile: TBD

Firmwide: 85014889.1 034670.1216